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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,573	03/15/2004	Daniel Perlman	DVRS-003XX	1722
207 7590 07/31/2008 WEINGARTEN, SCHURGIN, GAGNEBIN & LEBOVICI LLP TEN POST OFFICE SQUARE BOSTON, MA 02109				
EXAMINER RAMDHANE, BOBBY				
ART UNIT		PAPER NUMBER		
1797				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/800,573

Applicant(s)

PERLMAN, DANIEL

Examiner

BOBBY RAMDHANIE

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/02)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-13 have been considered but are moot in view of the new ground(s) of rejection.

Response to Amendment

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-7 & 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Perlman (US5302344).
4. Applicant's claims are toward a method.
5. Regarding Claims 1-7 & 13, Perlman discloses the method of covering an opening in a laboratory container with aluminum foil to provide a heat-resistant and solvent-resistant closure, comprising the steps of: A). Providing a preformed aluminum foil cup of sufficient size to cover said opening, wherein said cup is free of any substance that could contaminate said container (See Example 1), and wherein said cup comprises a bottom wall and a raised perimeter sidewall continuous with, and surrounding said bottom wall (See Example 1);B). Inverting and placing said cup over said opening (See Example 10); and D). Compressing the sidewall of said cup to a

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friction fit around said opening (See "tightly fitting" – compression). Applicant has made Step C) - optional; therefore Perlman anticipates the claims of the instant application.

Additional Disclosures Included: Claim 2: Wherein said cup is sterile (See Example 7; Perlman discloses that there are no steam extractable contaminants; which are one form of sterility; Claim 3: Wherein said cup has been sterilized by a process selected from the group consisting of radiation sterilization and gas sterilization (See Example 7; note steam autoclaving in first sentence); Claim 4: The method of claim 1 wherein the aluminum foil used to fabricate said cup is between approximately 0.0003 inches and approximately 0.002 inches thick (See Claim 1 of US5302344); Claim 5: The method of claim 4 wherein said aluminum foil is between approximately 0.0005 and approximately 0.001 inches thick (See Claim 1 of US5302344); Claim 6: Wherein the shaping of said cup is produced using a mechanical forming die that utilizes a forming means selected from the group consisting of pressure, heat, and a combination thereof (See Column 6 lines 65-68); Claim 7: Wherein said cup is an open dish-shaped structure selected from the group consisting of tubs, trays, cups, bowls, canisters and other vessels that are free of any structural feature that would interfere with the use of said cup as a covering for a laboratory container opening (See Example 1); and Claim 13: Wherein said container is selected from the group consisting of a beaker, a flask, a bottle, a graduated cylinder, a test tube, a centrifuge tube, a cuvette, a vial, and a scoop (See Example 10).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 1-7 & 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perlman (US5302344).

9. Applicant's claims are toward a method.

10. Regarding Claims 1-13, Perlman discloses the method of covering an opening in a laboratory container with aluminum foil to provide a heat-resistant and solvent-resistant closure, comprising the steps of: A). Providing a preformed aluminum foil cup of sufficient size to cover said opening, wherein said cup is free of any substance that could contaminate said container (See Example 1), and wherein said cup comprises a bottom wall and a raised perimeter sidewall continuous with, and surrounding said bottom wall (See Example 1); B). Inverting and placing said cup over said opening (See

Example 10); and D). Compressing the sidewall of said cup to a friction fit around said opening (See “tightly fitting” – compression). Perlman does not explicitly disclose C). Optionally adjusting the shape and diameter of said cup so as to fit over said opening. Perlman does however disclose the use of a variety of different containers that are readily available in all shapes and sizes, and have a multitude of different sized openings. Perlman further discloses the use of “cups” from Example 1 to cover the multitude of openings for laboratory containers (See Example 10). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Perlman and include step C). of optionally adjusting the shape and diameter of said cup so as to fit over said opening because with so many different laboratory containers Perlman discloses, it would have been essential to adjust the shape and diameter of said cup so as to fit over said opening since Perlman discloses that the method requires a “tight –fitting.”

11. Additional Disclosures Included: Claim 2: Wherein said cup is sterile (See Example 7; Perlman discloses that there are no steam extractable contaminants; which are one form of sterility; Claim 3: Wherein said cup has been sterilized by a process selected from the group consisting of radiation sterilization and gas sterilization (See Example 7; note steam autoclaving in first sentence); Claim 4: The method of claim 1 wherein the aluminum foil used to fabricate said cup is between approximately 0.0003 inches and approximately 0.002 inches thick (See Claim 1 of US5302344); Claim 5: The method of claim 4 wherein said aluminum foil is between approximately 0.0005 and approximately 0.001 inches thick (See Claim 1 of US5302344); Claim 6: Wherein the

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shaping of said cup is produced using a mechanical forming die that utilizes a forming means selected from the group consisting of pressure, heat, and a combination thereof (See Column 6 lines 65-68); Claim 7: Wherein said cup is an open dish-shaped structure selected from the group consisting of tubs, trays, cups, bowls, canisters and other vessels that are free of any structural feature that would interfere with the use of said cup as a covering for a laboratory container opening (See Example 1); Claim 13: Wherein said container is selected from the group consisting of a beaker, a flask, a bottle, a graduated cylinder, a test tube, a centrifuge tube, a cuvette, a vial, and a scoop (See Example 10).

12. Claims 1 & 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perlman in view of PGC Scientifics (1995-1996).

13. Applicant's claims are toward a method.

14. Regarding Claims 1 & 8-12, Perlman discloses the method according to Claim 1, except for explicitly stated that the surface shape of said sidewall is selected from the group including pleated, fluted, crinkled and dimpled. Perlman does however disclose the use of aluminum weighing dishes or "cups" or "chemical" dishes in Example 1 for use as covers for a multitude of laboratory containers in Example 10. PGC Scientifics discloses "chemical weighing dishes" or what are more commonly called in laboratory settings "aluminum dishes" (See Catalog numbers 4-1811, 4-4811-01, 29-5600, 29-5600-57, 295600-70, and 29-5601). PGC Scientifics also discloses that the sidewalls are pleated and/or crinkled (See crimped in description of Item # 29-5600). It would have been obvious to one of ordinary skill in the art at the time the invention was made

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to modify the method of Perlman with the "chemical dishes" of PGC Scientifics because these dishes are commercially available and that Perlman discloses the use of these dishes which are more commonly used for weighing dry chemicals on a balance (See Example 1).

Additional Disclosures Included: Claim 9: Wherein the length measured across the largest dimension of said bottom wall is between 1 inch and 6 inches (See PGC Scientifics; Item # 29-5600 Diameter: 43mm); Claim 10: Wherein the height of said perimeter wall is between 0.25 inches and 2.5 inches (See PGC Scientifics; Item # 29-5600; the height of the wall is 13mm); Claim 11: Wherein said height is between 0.5 inches and 1.5 inch (See PGC Scientifics; Item # 29-5600; the height of the wall is 13mm); Claim 12: Wherein said cup is manufactured without using a lubricant that could contact and contaminate said cup or multiple cups in a nested stack of similar cups (See PGC Scientifics; Item # 29-5600; description of product).

Telephonic Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BOBBY RAMDHANIE whose telephone number is (571)270-3240. The examiner can normally be reached on Mon-Fri 8-5 (Alt Fri off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Griffin can be reached on 571-272-1447. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Bobby Ramdhanie, Ph.D./
Examiner, Art Unit 1797
/B. R./

/Jill Warden/
Supervisory Patent Examiner, Art Unit 1797